

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT 21 1996

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Implementation of the)
Pay Telephone Reclassification)
and Compensation Provisions of the)
Telecommunications Act of 1996)
)
Policies and Rules Concerning)
Operator Service Access and)
Pay Telephone Compensation)
)
Petition of the Public Telephone)
Council to Treat Bell Operating Company)
Payphones as Customer Premises)
Equipment)
)
Petition of Oncor Communications)
Requesting Compensation for)
Competitive Payphone Premises)
Owners and Presubscribed Operator)
Services Providers)
)
Petition for the California Payphone)
Association to Amend and Clarify)
Section 68.2(a) of the)
Commission's Rules)
)
Amendment of Section 69.2(m))
and (ee) of the Commission's Rules)
to Include Independent Public)
Payphones Within the "Public)
Telephone" Exemption from End User)
Common Line Access Charges)

CC Docket No. 96-128

CC Docket No. 91-35

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**PETITION FOR RECONSIDERATION
OF SOUTHWESTERN BELL TELEPHONE COMPANY**

On September 20, 1996, the Commission released its Report and Order (Order) in this docket
and set in motion the forces which will lead to a fully competitive payphone industry. The Order

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allows market forces relatively free rein but, at the same time, recognizes the need for a smooth transition from regulation. Southwestern Bell Telephone Company (SWBT) generally supports the Order and the Commission's effort to realize Congressional intent. SWBT does feel, however, that a few areas of the Order need scrutiny and therefore files this Petition for Reconsideration.

I. ASSET VALUATION

The Order (paragraph 163) requires carriers that do not transfer payphone assets to a separate affiliate to reclassify assets to nonregulated status through Part 64 of the Commission's cost allocation rules. Companies that offer payphone service through a separate affiliate, however, are required to transfer assets pursuant to the Commission's affiliate transaction rules, which require valuation of the transferred assets at the higher of fair market value or net book cost. The Order concludes that the "going concern" value of intangible assets such as location contracts must be included in determining fair market value (paragraph 164).

The premise of the "going concern" approach seems to be that payphone assets have appreciated, and that shareholders must be required to "purchase" the business (through rate reductions) at an appreciated "going concern" value. This premise is inconsistent with existing rules and judicial decisions. None of the payphone assets on the BOC books has appreciated in value. Any "gain" would come only from valuing intangibles such as location owner contracts. No judicial decision has ever authorized the Commission to force the recognition of an unrealized gain on intangible assets outside the rate base or to allocate such unrealized, outside-the-rate-base gain to ratepayers. On the contrary, settled case law, the Commission's well-established rules, Generally Accepted Accounting Principles, reason and fairness all preclude such an approach.

Allocating appreciated value to shareholders makes sense only if ratepayers acquire an interest in BOC assets. But they do not.

Customers pay for service, not the property used to render it. Their payments are not contributions to depreciation or other operating expenses or to capital of the company. By paying bills for service they do not acquire any interest, legal or equitable, in the property used for their convenience or in the funds of the company. Property paid for out of moneys received for service belongs to the company just as does that purchased out of the proceeds of its bonds and stocks. Board of Public Utility Commissioners v. New York Telephone Co., 271 U.S. 23 (1926).

The intent of the affiliate transaction accounting safeguards is to ensure that the regulated telephone company ratepayers do not subsidize nonregulated operations of the BOC. To that end, the asset valuation rules provide that the higher of net book or fair market valuation is recorded on the regulated telephone company books for the sale of an asset to an affiliated company. This rule provides an extra check on the valuation to assure that no subsidy occurs. The intent is not to provide the ratepayer with a windfall for the transfer of assets deregulated by the Commission. The intent is only to keep the ratepayer whole.

The concern here is not about the value of physical payphone assets on BOC books. If physical assets alone are valued, net book value equals or exceeds fair market value. Instead, the concern is whether to include in the valuation assets that never have been, and never will be, on the BOC books--the valuation of intangibles such as contracts with location providers. The risk of loss on such "assets" is borne exclusively by the BOCs' shareholders, not by ratepayers. If the contracts disappear because of increased competition, the BOCs cannot seek regulatory relief, such as an exogenous increase in price, especially since the "lost assets" never appeared on the BOC books. Moreover, if the "assets" turn out to be perfectly valueless today -- despite a large net-book value -- the Commission surely will not raise BOC PCIs to compensate.

In short, there is no justification for applying a "going" concern valuation to BOC payphone assets transferred to a separate subsidiary. Commission rules require such assets to be valued at the higher of fair market value or net book cost. On reconsideration the Commission should state that fair market value does not include going concern valuation.

II. CEI PLANS

The Order (paragraph 199) requires BOCs to file CEI plans (within 90 days following publication of a summary of the Order in the Federal Register) describing how the BOCs will comply, from a payphone perspective, with the Computer III unbundling, CEI parameters, accounting requirements, CPNI requirements as modified by Section 222 of the 1996 Act, network disclosure requirements, and installation, maintenance, and quality nondiscrimination requirements. Paragraph 239 mandates that a BOC will not be allowed to negotiate with the location provider on the selection of the carrier to handle interLATA calls from the BOC's payphones until the Commission has approved the required CEI plan.

As a practical matter, if BOCs cannot participate in interLATA carrier selection until the Commission has approved their payphone specific CEI plans, then BOCs will be placed at a competitive disadvantage while the CEI plan is being considered by the Commission. Therefore, SWBT urges the Commission to clarify its rules to ensure that CEI plan approval will be expedited.

Historically, CEI plans have not always been approved on a timely basis. For example, SWBT filed an amendment to its Payment Processing Services CEI Plan on May 28, 1996. The Commission did not issue a Public Notice for two and one-half months. The Commission still has not ruled on this simple amendment. A similar delay in approving a BOC's payphone CEI plan would place BOC payphone operations at a competitive disadvantage and would be contrary to the

public interest. Therefore, SWBT urges the Commission to expedite approval of BOC CEI plans.

III. COMPENSATION FOR GENERAL ASSISTANCE CALLS

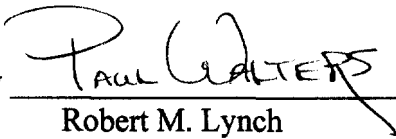
The Order did not address general assistance calls (non-revenue producing Operator Services calls, for example,) such as when an end user dials 0- and asks the operator for a call rate or for dialing instructions. SWBT currently receives no compensation for these calls even though operator expense is incurred. SWBT requests the Commission to clarify that operator service providers may be compensated for these general assistance calls, and that PSPs may choose to obtain compensation for these calls from their end user.

IV. CONCLUSION

For the reasons discussed above, the Commission should grant the requested relief.

Respectfully submitted,

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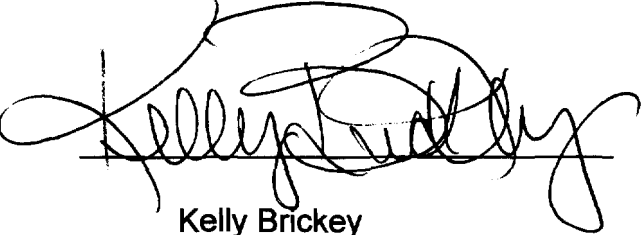
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October 21, 1996

CERTIFICATE OF SERVICE

I, Kelly Brickey, hereby certify that the foregoing Petition for Reconsideration of Southwestern Bell Telephone", has been served October 21, 1996 to the Parties of Record.



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October 21, 1996

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